

**THE U.S. DISTRICT COURT FOR SOUTHERN DISTRICT OF NEW YORK**

John Does, Mary Roes, and	)
Similarly Situated Victims	)
Petitioners	)
v.	) Emergency Petition for a Writ to
Williams Barr, the Attorney General of	) to Direct the Respondent to Take
The United States (In His Official Capacity)	) Appropriate Action to Remove
Respondent	) Obstacles in Saving Lives

**Emergency Petition for Judicial Intervention to Remove Obstacles in  
Saving American Lives for Covid 19 Patients**

Petitioners, citizens of the United States as victims or potential victims under the attack of such deadly pandemic of Covid19, also a class of hundreds of thousands Covid19 Pneumonia Patients as victims who have been deliberately or recklessly, excluded from receiving such proven best medication as of Hydroxychloroquine (hereinafter, from time to time, HCQ), such exclusion contributes skyrocketed number of unnecessary deaths, by and through their undersigned volunteer counsel, Ning Ye, Esq., *pro bono*, file this Emergency Petition for Writ of Mandamus, for saving American lives pursuant to 28 USC 1651.

**Brief Introduction**

conscience, have been shocked to see that the death toll of American citizens have reached more than 20,000 from Covid 19 corona virus caused pneumonia like syndrome, while the only Lord Endowed, medically proven effective drug, namely, hydroxychloroquine, suppressing such slow virus as of Covid19 on molecular level, with little or no risk for short-period-orally intake, as the only and unique means to save patients' lives in massive scale, have been either maliciously boycotted or deliberately limited for its general application on both in-patients and outpatients either for ignorance, stupidity recklessness or for ulterior motive or even demonic agenda, in heartless disregard of the lives of fellow human beings.

Since the US FDA has issued an EUA permit to BARDA to allow clinical application of hydroxychloroquine (also known as Plaquenil or in Chinese 硫酸羟氯喹) and Chloroquine Phosphate (磷酸氯喹) o March 21, 2020 under the auspices of President Donald Trump, the death toll of Covid19 patients did not appears to have drastically decrease. Instead, the casualty of American lives have still been climbing up. Today the corona virus caused pneumonia has been exceeding 20000. For the State of New York alone, the epi-center, the death toll has exceeded 10000. Such a statistics appears contrary to the statistics presented by the following pioneering clinical trial:

Dr. Vladimir Zelenko: 699 patients, proof of 100% cure rates after application of the cocktail prescription made of three ingredients: **hydroxychloroquine** (*NOT Chloroquine phosphate!!!*), 400mg daily dosage, Azithromycin 500mg (or any high quality antibiotics); daily dosage; and 220 mg Zinc Sulfate (optional, for six days, all patients recovered. Death: zero; intubation: zero.

Dr. Zelenko's cocktail treatment has revealed one harmful displeasure to certain special interests group: too cheap the price tag to save an American life: the life saving prescription costs only approximately \$20. True. In Shanghai, China, the retail price for a box of Hydroxychloroquine, of top quality, as of the pride of Shanghai, containing 14 pills, 100mg each, RMB 30, approximately equalizing \$4. It is not tolerable to allow such a burger price medicine to get into the game in salvation and rescue of massive American lives at limbo.

Earlier, Dr. Douglas Deibelle: 300 cases, using **hydroxychloroquine, of daily dosage of 400mg, rate of being cured and discharged: 300**. Death: zero; intubation: zero.

Now comes Dr. Stephen Smith, the nation's top notch epidemiologist and virologist, his clinical trials are focused upon controlled group of patients with such chronicle diseases as diabetes, hypertension and cardiovascular complications: His answer to Fox News on April 4<sup>th</sup> 2020 was very academic and intellectual type: Zero death and "Zero Intubation", (implicating all healed) followed with his proclamation: "The game rule change has actually occurred. This is the beginning of the end!"

What Dr. Smith's envisage of the "Beginning of the end" did not happen as of this moment, the death toll is still refusing to decline. Though all those privileged are said to take or store the magic pills, this Petitioner have been told that the roughly less than 15% of hospitalized patients in New York and elsewhere have received high-efficient, less (virtually no risk) risk Hydroxychloroquine pills.

A group of people, who are playing such games either to purposefully or recklessly boycott the clinical application of hydroxychloroquine to Covid19 patients with the following improved smart tactics:

Nevada Governor Steve Sisolak virtually banned both **hydroxychloroquine** and *Chloroquine phosphate under the excuses for controlled medical purpose*, after one Las Vegas resident drank the fish tank or commode cleaner which contains an ingredient of Chloroquine phosphate and got killed.

New York Governor Andrew Cuomo has appeared "more enthusiastic" by presenting an "ambitious" *clinical trial* for one thousand selected Covid19 Patients to receive *Chloroquine phosphate and hydroxychloroquine* for treatment, under the courageous proposal made by the New York University. What, 1000 Patients? A big number? Statistic shows that through out the State of New York, there are approximately 25000 or more Covid19 inpatients, hospitalized. With 1000 privileged patients only means a 4% of the total population of inpatients. Moreover, most of them received low

efficiency and higher risk *Chloroquine phosphate* rather than high curing yielding rate, lower risk **hydroxychloroquine**.

**Those State Executive Orders should be and must be declared unconstitutional, if not criminal in nature.**

**The game to keep the American death rate high is being played in ultra-smart way:**

First, they are ignorant or pretend to be ignorant to the distinction between the life saving HCQ and Fish tank cleaner;

Secondly, they are ignorant or pretend to be ignorant to the distinction between the high quality, lower risk, life saving **hydroxychloroquine** and lower quality, higher risk *Chloroquine phosphate*; While the former is an improved chemical agent used for treating Lupus starting year 1946 with high efficiency to Covid19 as twice as the latter, and the risk is 50% in comparison to the latter. While the latter was mainly used to treat Malaria, broadly used in African countries. According to the National Pharmacy Codes of the People's Republic, a single dosage of 2000mg of *Chloroquine phosphate* may cause severe side effects as blindness, while 4000-6000mgs for a single may cause instant death. Chronicle disease patients takes the pills of *Chloroquine phosphate* for more than 2 years may yield such side effects of impaired vision or blindness or cardiac arrests in isolated cases. Tolerance for HCQ is doubled in comparison to Chloroquine.

Then, what is the harm for a daily dosage of 400mg to 600mgs, for a six-day therapy?

Those conspirators are ignorant or pretend to be ignorant to the distinction between an old medicine of more than 70 years of oral taken and day-one new drug. By limiting barely 4% of the all Covid19 inpatients to have an access to such a proven life saver, or 2% of higher quality, lower risk HCQ, they simply turned the calendar back to 74 years before. They pretends to be ignorant to the mere facts that with 74 years of accumulated experience for millions and millions of patients to have orally taken these pills of HCQ, whatever they stupidly wanted for trial had long before tried, having been tried by millions.

Governor Sisolak's 0% and Governor Cuomo's 2-4% has successfully excluded 96%-100% Americans from receiving such a life saver under the national emergency; Using the scary tactic that HCQ though admittedly with "mild effect" as they had publicly pronounced, but with what they called groundless "high risk" to patients with cardiac issues, with zero proof.

The scary tactics are very effective, this time, even President had to retreat by half pace in comparison to his position in his March 19 Twitter; "If you have an access to

Ventilator, you don't have to take HCQ. If you have cardiac issues, you may need to stay away with it. Yet why not try this gift from heavens." According to Wuhan, China's experience based upon Anatomy of 29 Covid19 corps, Ventilators upon which Governor Cuomo has his brand-named superstition and unyielding faith, is double edged swords. Ventilators buy patients time in symptomatic/supportive treatment, yet it kill patients by pressing down the harmful sticky phlegm accumulation in upper respiratory tract into lower alveoli to trigger irreparable lung damage leading deadly respiratory failure. It is much easier to drain and clean phlegm when it was accumulated in upper respiratory bronchitis.

Additionally, such discriminative issuing of Hydroxychloroquine, as the proven life saver, only to 2-4% selected patients, are vividly showcasing a brutal violation of American citizens' constitutional rights of equal protection under 14<sup>th</sup> Amendment.

Those who purposefully or recklessly prevented super majority of American people from receiving Hydroxychloroquine as an only proven cure no matter how "mild" should be held accountable for the massive number of death toll, among whom, the super majority may not have to die if they had not been prevented from receiving Dr/ Zelenko's cocktail treatment or a single Hydroxychloroquine treatment, for 400-600mg per day, for a period of 6-7 days, almost all of them would have turned from Covid19 positive to negative with no or comparatively little risks and side effects (Academician and Dr. Zhong Nanshan from frontal line of rescuing Covid19 patients). Yes, the super majority among the high death toll does not have to die, Covid19 is not the type of most lethal virus triggering disease, remember that.

Those who purposefully or recklessly boycotted the Hydroxychloroquine therapy may have collectively or individually committed such heinous federal crimes of anti-humanity type as of genocide and common law crimes of voluntary manslaughter, in addition to APA violations of trampling upon victims civil rights under 42USC 1981. .

With all such great number of American lives at atake, this Honorable Court must act as quickly as possible to issue a Writ to enjoin all harmful blockages, hinderances, restrictions, interferences, against such humanitarian rescue by using FDA approved, treating physician supervised Hydroxychloroquine. The Writ being sought by this Group of the Petitioners as a class, shall explicitly grant, upon such emergency, such covering-all medical relief which is accessible to all Covid19 Patients for them to receiving without discrimination Hydroxychloroquine immediately without delay.

### **Parties:**

Petitioners John Does and Mary Roes, and similarly situated group of Petitioners, whose number is more than 600,000, are the U.S. citizens who have been infected with Covid19 corona virus. More than 100,000 within this group are the residents of

the State of New York, the nation's largest epi-center, in which corona virus death toll has reached six digits. Majority of these deaths might have been avoided should they all received proper, decent, and ethical treatments. The Petitioners are also those who are purposefully or recklessly ripped off their equal constitutional rights to life and liberty by being repeatedly rejected to receive the best anti-viral medicine of HCQ, or being coerced to intake less effective, less safer chloroquine, rather than much effective, almost absolutely safe, improved Chloroquine, *i.e.*, Hydroxychloroquine (HCQ).

Respondent William Barr, the Attorney General of the United States, in his capacity, as the Chief of the U.S. Department of Justice, with endowed power to investigate high crimes such as the crimes against mankind, crimes of voluntary manslaughter; misconducts invading citizens' Federal Constitutional Rights and civil rights violations.

The Service address for the Respondent William Barr is 950 Independence Avenue, NW, Washington DC 20530. And its dual address for service purpose is U.S. Attorney's Office, District of Columbia, which is:

USDOJ, U.S. Attorney's Office  
555 4<sup>th</sup> Street, NW  
Washington DC 20001

Respondent U.S. Department of Justice as a Federal Government Agency has office of administration in all States including the State of New York.

Jurisdiction and Venue:

This is a Federal Question case whose subject matter jurisdiction is found in in 28 USC 1331. There is no monetary issues being involved in this instant action.

The case and controversies as federal question issues involve in this case is 14<sup>th</sup> Amendment of the Constitution of the United States, among others.

All Writs Act under 28 U.S. Code § 1651;

Venue is proper pursuant to 28 U.S. Code § 1391, because both Petitioners and Respondent can be deemed residents of any State including the State of New York to establish personal jurisdiction.

### **Discussion**

28 U.S. Code § 1651.Writs

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law. (b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.

This is case whose outcome may means a demarcation line between life and death, for tens of thousands, if not hundreds of thousands, non-privileged American citizens who are being attacked by deadly pandemic of Covid19, even though, I have to stress here, the broadly infected epidemic may not be lethal if it were properly handled and correctly treated. Therefore, this Petition for Writ, we have to directly resort to the 14<sup>th</sup> Amendment which provides as follows:

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

When Hydroxychloroquine (HCQ) has been proven effective as the only available anti-viral drug, whose safety for patients' in-taking orally has been well established for 74 years since year 1946, to give inclusion of only such small percentage of selected patients from the vast needy pool, by excluding more than 90% of needy patients waiting for the medically proven safe drug to save their lives, makes no difference to commission of voluntary manslaughter. If such a boycotting efforts are out of malicious mans rea, to help trigger massive unnecessary death tolls from those deliberately precluded majority of American citizens as a group, for any manifested or undeclared ideological or commercial agenda, these advocators keeping boycotting the salvation under such period under national emergency may have committed such war crimes against mankind as genocide. To say the least, all sort of broadly criticized state executive orders to either ban or restrict the usage, by keeping the supermajority, or by keeping any single equally protected citizen, outside the recipients of such medication, should be deemed unconstitutional in gross violation of 14<sup>th</sup> Amendment of Equal Protection as to the protection of American citizens' most fundamental rights to life, which is paramount.

Additionally, such anti-humanity practice by excluding most American Covid19 Patients from receiving life-saving medicine has also violated these Plaintiffs' civil rights under 42 USC 1981. Due to time pressure, this part of analysis will be discussed in separate memo.

A party seeking mandamus must demonstrate that it has a "clear and indisputable" right, there are "no other adequate means" of relief, and the writ is otherwise "appropriate under the circumstances." *Cheney v. United States Dist. Court for D.C.*, 542 U.S. 367, 380-81 (2004). The U.S. Supreme Court recognized that a district court normally has wide discretion to determine whether the criteria for certification, for



instance, under 42 USC § 1981 is satisfied. But as the Supreme Court has stressed, “[d]iscretion is not whim,” *Halo Elecs., Inc. v. Pulse Elecs., Inc.*, 136 S. Ct. 1923, 1931 (2016), and even broad discretion can be exercised in a manner that constitutes a “clear abuse of discretion” that “justif[ies] the invocation of th[e] extraordinary remedy” of mandamus, *Cheney*, 542 U.S. at 380. Mandamus is a necessary safety valve in the extraordinary situation here, with or without the Writ from this Honorable Court may mean the difference between life and death concerning thousands, or tens of thousands American Covid19 patients’ lives, therefore, it is not only a judicial wisdom and jurisprudential righteousness, but the noble sense of glory for this Honorable Court to immediately act to intervene to this great salvation by affirmatively and compassionately make a historical exception when a great honor and Grace from the Heavens is presented before this Honorable Bench. .

Given to an overwhelming adversaries formed formidable opposition to today’s unique, and only immediately available, proven life saving cure, namely, Hydroxychloroquine pills, as the only safe anti-virus medication, with their murmur or noisy opposition against that drug’s general application to half-million Covid19 pneumonia patents, their completely ungrounded challenger based upon “safety concern”, with zero concrete case to substantiate their theory. Their only hard proof is the fish tank cleaner case. Such massive sabotaging efforts which have already contributed to such uncontrollable uprising of death tolls has been in place for several weeks for unknown motive. If this widely practiced demonic means to be allowed to go on and on in our nation’s hospitals, who knows how many more thousands of non-privileged American patients will be killed under such restrictions which appears on its very surface unconstitutional and unethical.

### **Petition for Class Action Certification**

Petitioners respectfully prays for this Honorable Court to promptly certify, or conditionally certify this instant case as a class action because it may be apparent to see that all the features represented demonstrates the eligibility and adequacy for the Petitioners be be certified as a class, whose number is ranging from 600,000 to 300 Millions, commonly involving such actual and potential rights to life as their vital interests facing life and death as that of uniquely paramount.

This class of actual and potential petitioners is so large that joinder of all members individual by individual is apparently impracticable

A party seeking class certification must satisfy the four requirements set forth under Fed. R. Civ. P. 23(a) (Rule 23(a)).

Numerosity. A class is so large that joinder of all members is impracticable. Here, the number of the Petitioners (beneficiaries as well) is noticeably ranging from 600,000 to 325,000,000.

Commonality. Questions of law or fact are common to the class: The question is common facing to all of us the U.S. citizens: Life or premature death under alleged manipulation due to intentional or reckless ripping the best effective ever medicine which every one should be equally avail under 5<sup>th</sup> and 14<sup>th</sup> Amendment.

Typicality. Named parties' claims or defenses are typical of the class: Defending our equal constitutional rights to choose life under equal medical protection and refuse to be discriminatively maltreated in the hands of antagonists boycotting the best available life saving medicine: Hydroxychloroquine.

Adequacy of representation. Representatives will fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a); Denney v. Deutsche Bank AG, 443 F.3d 253, 267 (2d Cir. 2006). In this case, there is no penny of personal benefits are involved. In order to be certified as a class action, a case must meet all four requirements of Rule 23 Fed. R Civ. Proc.

Numerosity, commonality, typicality, and adequacy: and must also satisfy one of the alternative provisions of Rule 23(a) Shelter Realty Co.:r:p. v. Allied Maintenance Co.:r:p., 574 F.2d 656, 661 n.15 (2d Cir. 1978). Although the Court should perform a "rigorous analysis" to ensure that the requirements of Rule 23 are met, "the Second Circuit has directed district courts to apply Rule 23 according to a liberal rather than a restrictive interpretation," In re Nasdaq Market-Makers Antitrust Litig., 169 F.R.D. 493, 504 (S.D.N.Y. 1996). This Action apparently meets the Requirements Of Rule 23(a) .Even applying the most rigid standard, this action has apparently meets the criteria under Rule 23.

"[N]umerosity is presumed at a level of 40 members", Consolidated Rail Corp. v. Town of Hyde Park, 47 F.3d 473,483 (2d Cir.), cert. denied, 515 U.S. 1122 (1995). In This instant case, the number is no less than 600,000. "Courts have not required evidence of exact class size or identity of class members to satisfy the numerosity requirement." Robidoux v. Celani, 987 F.2d 931, 935 (2d Cir. 1993); see also In re Nasdaq Market-Makers, 169 F.R.D. at 509 ("[T]he court may make common sense assumptions . . . ."

#### Commonality

The proposed defendant class also satisfies Rule 23(a) (2), which directs that there be "questions of law or fact common to the class". Fed. R. Civ. P. 23(a) (2). The instant case amply satisfies that rule. See Mohawk, 97 F.R.D. at 456-57; Cayuga, 89 F.R.D. at 630; Oneida, 85 F.R.D. at 705.

#### Typicality.

Rule 23(a) (3) requires that "the claims and defenses of the representative parties are typical of the claims or defenses of the class". Fed. R. Civ. P. 23(a) (3);



Named parties' claims or defenses are typical of the class: Defending our equal constitutional rights to choose life under equal medical protection and refuse to be discriminatively maltreated in the hands of antagonists boycotting the best available life saving medicine: Hydroxychloroquine. .

Adequacy of representation. Representatives will fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a); Denney v. Deutsche Bank AG, 443 F.3d 253, 267 (2d Cir. 2006). In this case, there is no penny of personal benefits are involved. In order to be certified as a class action, a case must meet all four requirements of Rule 23 Fed. R Civ. Proc. County of Oneida v. Oneida Indian Nation, 470 U.S. at 233, (1978)

Wherefore, in the foregoing light, Petitioners, respectfully prays that this Honorable Court kindly certify the action as a "class action".

**Relief Being Sought:**

Writ of Mandamus:

An Writ is immediately issued to direct the Respondent Attorney General His Excellence William Barr to form a task force from the U.S. Department of Justice to conduct criminal investigation upon those who should be held accountable for contributing to skyrocketed number of unnecessary Covid19 deaths by intentionally or recklessly ban or restrict the Hydroxychloroquine, the only proven cure with relatively highest degree of chemical safety in the long history of oral taking during the course of 74 or more years for such possible federal offenses:

- a. Genocide;
  - b. Manslaughter;
  - c. Gross Civil Rights Violations;
  - d. Corruptions;
  - e. Conspiracy in committing one or more of the above offenses.
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1. Injunctive Relief:
    - a. Immediate Order of Provisional injunction to lift all unnecessary restrictions in any form under any unsubstantiated, ungrounded excuses, regardless its being illusionary, insane, of stupidity or of ignorance, upon such best ever drug as anti-viral, life saving, well established pill as Hydroxychloroquine;
    - b. Eliminate any restrictions and bans on Hydroxychloroquine for its availability to each and every person in the United States who has been infected with Corona Virus;
  2. Declaratory Relief:

To Declare such banning or restrictive state executive orders such as the one in the State of Nevada and the State of New York, and elsewhere, are unconstitutional and therefore be abolished and repealed by this Court's Injunction;

To declare that no person shall be deprived his constitutional rights to receive the best ever medication, such as Hydroxychloroquine, reasonably available, under the equal protection of his rights to life as paramount interests under 14<sup>th</sup> Amendment;

All such other remedies and reliefs as this Honorable Court deems just and proper.

Respectfully submitted by,

/s/Ning Ye, Esq. \*

Counsel, *pro bono*, for the Petitioners ;

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\*Mr. Ning Ye is a U.S. citizen practicing law as for livelihood, while involving himself in numerous activities purely for public goods and commonwealth, concentrating upon such matter as relevant to human rights and human dignity issues. He was serving the Radio Free Asia as one of its best received political commentator during the period from 1999 through 2019. Mr. Ye is also a evangelical Christian and a highly acclaimed musical composer in serious musical arts. Based upon his family background of Chinese herbal medicine and his personal involvement in helping the world's top line scientists in life science, including those studying in the cutting-edge virology, epidemiology, and general internal medicine, Mr. Ye has interposed himself into life saving causes starting later January 2020, having made well proven self-therapy proposals and policy proposals through various channels since the outbreak of the corona virus health crises took place, including Ye's solution I-through IV. Mr. Ye is the world's only one who repeatedly and publicly proclaimed, starting on February 13, 2020, that turning point of China's corona virus crises leading to more than 95% death toll elimination would occur by the end of March 2020 as earlier as February 13, 2020, while all those China's leading authorities like Academician Zhong Nanshan predicted that the turning point would likely occur in May or June. Mr. Ye pinpointed that Corona Virus triggering syndrome is not necessarily lethal. His proposed solution is later proven effective. Mr. Ye also raised such timely observation that massive death should be attributed to both Patients' and medical personnel's mal-nutrition, leading to air lifting of meats to Wuhan and Hubei Province. He also publicized his finding that majority death of medical personnel was caused by their overtime working in hardship. That immediately brought the policy change which banned medical personnel to work overtime, in many cases, their working hours were reduced to 6hrs/day. That measures virtually eliminated the death among medical personnel. Starting Beginning of March, he wrote many letters and memos to different contacts of the U.S. agencies, including a dozen to WH proposing best salvation alternatives. Therefore, this action is not out of sudden guts. It is deeply rooted in well preparation dedicating to public goods.